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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

No. 457

VAN M. GRIFFITH,

*Appellant,*

*vs.*

PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Public Works,

*Appellee,*

CITY OF LOS ANGELES, a municipal corporation, *et al.*,

*Appellees.*

On Appeal From the District Court of Appeal of the State of California.

## Motion of Appellee to Dismiss Appeal and Brief in Support Thereof.

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PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Public Works,

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CITY OF LOS ANGELES, a municipal corporation, *et al.*,

*Appellees.*

## MOTION OF APPELLEE TO DISMISS APPEAL.

Appellee, People of the State of California, acting by and through the Department of Public Works, respectfully moves this Honorable Court to dismiss the appeal in the instant action on the grounds that there is no substantial federal question involved, and that the judgment rests on an adequate non-federal basis.

This is an appeal from a judgment in an eminent domain proceeding commenced by plaintiff, State of

California, in which Appellant-defendant claimed an interest in the property being acquired by reason of a revisonary interest therein, but the trial court found that Appellant-defendant had no interest in the property and was not entitled to any share of the award. The Court further found that defendant City of Los Angeles was the owner of the property being acquired and plaintiff has paid the amount of the judgment award to said defendant.

This motion to dismiss is based upon the fact that the California District Court of Appeal in affirming the judgment of the trial court held that:

1. the deed of 1897 conveyed 3,000 acres of land to the City of Los Angeles without condition, and that Appellant-defendant had no reversionary interest therein;

2. that the deed of 1898 described substantially the same land conveyed by the deed of 1897, together with additional contiguous land; that the 1898 deed attempted to impose conditions upon land which had previously been conveyed to the City of Los Angeles, but that such conditions were not applicable to the land conveyed by the deed of 1897; that practically all of the land sought to be acquired by the plaintiff in this action was located within the boundaries of the land conveyed without condition by the deed of 1897; and that as to the land conveyed by the deed of 1898, subject to conditions subse-

quent, there had been no violation of any condition in said deed, and hence no reversion to Appellant-defendant;

3. that the exercise of the power of eminent domain by the State of California does not constitute a breach of a condition subsequent and does not cause a reversion;

4. that if there had been a breach of condition as to the deed of 1898, then Appellant-defendant had failed to cause a forfeiture of the land by failing to make a re-entry, or its legal equivalent;

5. that Appellant-defendant could have raised all of his alleged rights by answer to the complaint in eminent domain so that no cross-complaint is necessary to protect any rights of a property owner, and under California law in an eminent domain action in which the State of California is the plaintiff, no cross-complaint as to plaintiff is permitted;

6. that the denial of the right to file the cross-complaint was also based in part upon the lateness of the attempted filing of said cross-complaint, and because of the non-justiciable issues Appellant-defendant attempted to raise therein;

7. that Appellant-defendant's attacks on the selection of the highway route and the necessity of acquiring certain property therefor, related only to the question of "necessity" which, under California law, is non-justiciable; Appellant-defendant has never at-

tacked the constitutionally-protected question of whether the property acquired was for a public use;

8. the proceeding herein followed the requirements of the California Code of Civil Procedure;

9. no evidence was offered by Appellant-defendant as to the value of his interest—the reversionary interest.

The universal rule as enunciated by the California District Court of Appeal in the instant action, and by this Honorable Court in many decisions, is that the exercise of the right of eminent domain is not an impairment of the obligation of contract.

## BRIEF IN SUPPORT OF MOTION TO DISMISS.

### There Is No Substantial Federal Question Involved, and the Judgment Rests on an Adequate Non-Federal Basis.

#### A. Appellant-Defendant Had No Compensable Property Interest in the Property Being Acquired by Eminent Domain.

The trial court and the California District Court of Appeal found that the grant of 1897 conveyed approximately 3000 acres of land to the City of Los Angeles without any condition the violation of which would cause a reversion. Both said courts further found that substantially all of the land so conveyed was described in the deed of 1898 which attempted to impose certain conditions on the 3000 acres already conveyed to the City of Los Angeles. Such conditions, it was found, could not be made to apply to the 3000 acres already conveyed to said City of Los Angeles, *The People v. City of Los Angeles*, 179 Cal. App. 2d ....., 179 A. C. A. 629, 640, Statement of Jurisdiction, App. p. 12, and that practically all of the land sought to be acquired in the instant action, was located within the 3000 acres conveyed without condition. The courts below further found that although the grant of 1898 did contain a condition subsequent, the acts of the State were not in violation of any condition of said grant of 1898. *The People v. City of Los Angeles*, 179 Cal. App. 2d ....., 179 A. C. A. 629, 643, Statement of Jurisdiction, App. p. 16. Con-

sequently, the park did not revert to Appellant-defendant, and he was not deprived of his property without compensation. *City of Santa Monica v. Jones*, 104 Cal. App. 2d 463 (232 P. 2d 55); *First Reformed Dutch Church v. Croswell*, 210 App. Div. 294 (206 N. Y. S. 132); *City of Buffalo v. Day*, 8 Misc. 2d 14, 17.

The further determination that in any event there had been no violation of any condition of the grant of 1898 was based on the interpretation of the language of the deed which provided that:

> "It is understood that the use of any part of said premises for . . . transportation purposes, for carrying the inhabitants of said City into and through said park, shall not be considered a violation of any of the conditions upon which this donation and grant are made, anything to the contrary thereto notwithstanding."
>
> *The People v. City of Los Angeles*, 179 Cal. App. 2d ....., 179 A. C. A. 629, 643; Statement of Jurisdiction, App. p. 16; Ex. G.

This determination of fact, that the State highway, declared a freeway, meets this exception, and was instrumental in carrying out the purposes of the grant is entitled to great weight. This Honorable Court has stated that such a determination can be rejected ". . . only if we can say that it is so without warrant as to be a palpable evasion of the constitutional guarantee here invoked." (*Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies*, 312 U. S. 287, 294.) Hence, at most, the Appellant-defendant only had a reversionary interest which had not reverted to him. Even assuming the breach of a condition by the City of Los Angeles, Appellant-defendant took no action to forfeit the es-

tate. (*The People v. City of Los Angeles*, 179 Cal. App. 2d ....; 179 A. C. A. 629, 643.)

The exercise of the right of eminent domain does not cause a reversion, and it is a widespread theory of eminent domain law that where the likelihood of reverter is remote, there may be no compensation for the taking of the interest. (*Beard's Erie Basin v. People of New York*, 142 F. 2d 487; *People of Puerto Rico v. United States*, 132 F. 2d 220, citing many cases; *First Reformed Dutch Church v. Croswell*, 210 App. Div. 294 (206 N. Y. Supp. 132 (the leading case)); *City of Santa Monica v. Jones*, 104 Cal. App. 2d 463 (232 P. 2d 55).)

Even assuming there were some compensable interest, the Appellant-defendant made no offer of proof in regard to the value of his particular interest—only as to the value of the entire fee interest. (*The People v. City of Los Angeles*, 179 Cal. App. 2d ...., 179 A. C. A. 629, 646; Statement of Jurisdiction, App. p. 21; Rep. Tr. pp. 419, 424-425.)

Therefore, Appellee respectfully contends that Appellant-defendant had no interest taken from him which was capable of valuation and furthermore that Appellant did not even offer to show any value (if there were any) to the actual interest he owned.

**B. Appellant Was Afforded Full Due Process of Law.**

The basic claim of Appellant-defendant seems to be that he was denied due process because he was denied leave to file a cross-complaint.

Under California law, Appellant-defendant could have raised all his alleged rights by way of answer to the complaint, so that no cross-complaint is necessary to

protect any rights of a property owner. The California Code of Civil Procedure, Section 1246, sets forth what must be pleaded in an answer in an eminent domain suit. Further, no cross-complaint is permissible in an eminent domain proceeding against the State of California as the plaintiff. (*People v. Buellton Development Co.*, 58 Cal. App. 2d 178 (136 P. 2d 793); and, after the filing of an answer, a defendant may not file a cross-complaint as a matter of right. (*The People v. City of Los Angeles*, 179 Cal. App. 2d ....., 179 A. C. A. 629, 638; Jurisdictional Statement, App. p. 9.)

One of the reasons for the denial of the leave to file the cross-complaint was the delay in moving for such leave for three years and five months. (*The People v. City of Los Angeles*, 179 Cal. App. 2d ....., 179 A. C. A. 629, 638; Jurisdictional Statement, App. pp. 8, 9.) Among other reasons, it is proper to deny a motion for leave to file a cross-complaint if the motion is untimely or if the cross-complaint is demurrable. (*Gloggan v. Hagan*, 107 Cal. App. 2d 313, 320.) Both of these reasons were present in the instant case, giving the court wide discretion in its determination that the motion should be denied. Denial of right to file a plea because of late filing has been upheld by this Honorable Court as an adequate State ground. (*Western Union Tel. Co. v. Wilson*, 213 U. S. 52.) Appellant-defendant was not prejudiced by the denial of his motion for leave to file a cross-complaint, because the proper method and procedure for setting forth the alleged interest of a defendant and its value, is by way of answer. (*People v. Buellton Development Co.*, 58 Cal. App. 2d 178.) Furthermore, the trial court permitted Appellant-defendant to file an amended answer which set forth

for consideration all justiciable matters which appellant pleaded in his proposed cross-complaint. [Rep. Tr. pp. 177, 197.] There was no denial of due process of law.

### C. There Is No Impairment of the Obligation of a Contract Where a Taking Is by Eminent Domain.

This Honorable Court has held consistently that the taking of property by eminent domain does not impair the obligations of a contract. (*West River Bridge v. Dix*, 47 U. S. (6 How.) 507.) In a dissenting opinion by Mr. Justice Brennan such a claim was said to be "utterly without substance". (*Louisiana Power and Light Co. v. Thibodaux*, 360 U. S. 25 at 34.) It has also been said that the states have not, under the contract clause, divested themselves of the power to legislate in matters within the scope of their authority. (*Contributors to Pennsylvania Hospital v. City of Philadelphia*, 245 U. S. 20.)

## Conclusion.

Appellee respectfully moves this Honorable Court to dismiss this appeal in accordance with Rule 16 1(b) of the Revised Rules of the Supreme Court of the United States on the grounds that the judgment rests on an adequate non-federal basis and that there is no substantial federal question involved.

Respectfully submitted,

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